



"I Hate this Case!"

*Working with
The Reluctant
DV Victim*

Donna Kelly

Sexual Assault and Domestic Violence

Resource Prosecutor

Utah Prosecution Council

Office of the Attorney General

This project was supported by U.S. Department of Justice, Office on Violence Against Women; the Utah Commission on Criminal and Juvenile Justice - **Grant number - 2011-WE-AX-0051**. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



*"It is not the critic who counts:
not the man who points out
how the strong man stumbled or
where the doer of deeds could
have done better. The credit
belongs to the man who is
actually in the arena, whose
face is marred by dust and
sweat and blood, who strives
valiantly, who errs and comes
up short again and again,
because there is no effort
without error or shortcoming, but
who knows the great
enthusiasms, the great
devotions, who spends himself
for a worthy cause; who, at the
best, knows, in the end, the
triumph of high achievement,
and who, at the worst, if he fails,
at least he fails while daring
greatly, so that his place shall
never be with those cold and
timid souls who knew neither
victory nor defeat."*

- Theodore Roosevelt



- ▶ 2,753 died on September 11, 2001
- ▶ 17,994 have died from Domestic Violence crimes since September 11, 2001 in America (Jan 2015)



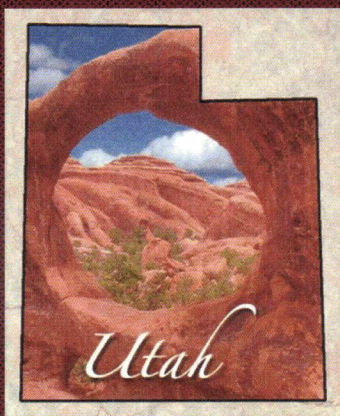
- ▶ 3 people died in the Boston Marathon bombing on April 15, 2013
- ▶ An average of 3.4 women die EVERY DAY from Domestic Violence crimes in America

Domestic Violence in America

- ▶ Every 9 seconds in the US a woman is assaulted .
- ▶ Domestic violence is the leading cause of injury to women—more than car accidents, muggings, and rapes combined.
- ▶ The costs of intimate partner violence in the US alone exceed \$5.8 billion per year.



Domestic Violence in Utah



- ▶ More than 3,000 victims enter shelters every year to escape DV.
- ▶ At least that many are turned away.
- ▶ 40 per cent of homicides in Utah are DV homicides. (about 30 every year)
- ▶ In Utah, there are about 175,000 intimate partner-related physical and sexual assaults each year.

Lack of Victim Participation



After police involvement, only 15 per cent of DV victims participate in prosecution.

Why???

Answer:

It Doesn't Matter!!

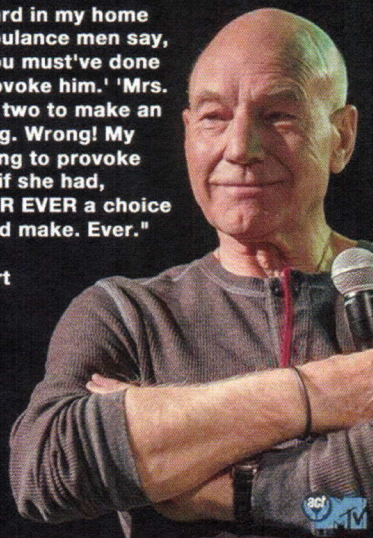
NOTE: In a 2005 study CCJJ, in Utah the biggest reason cited by victims for not reporting abuse and not leaving violent relationships:

FEAR.

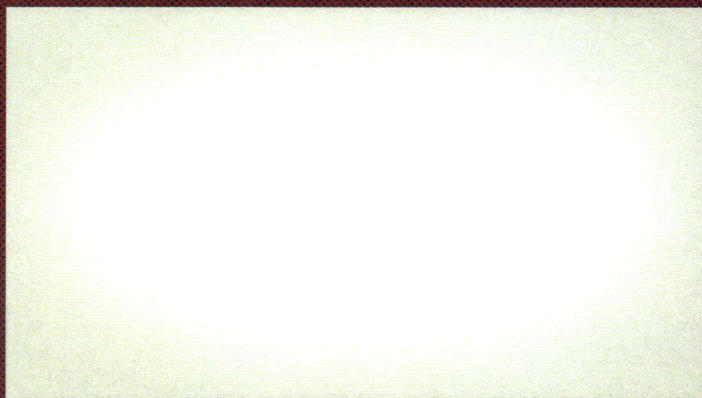
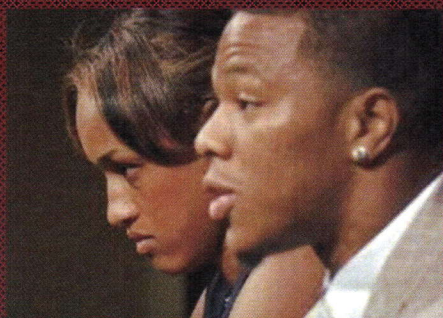


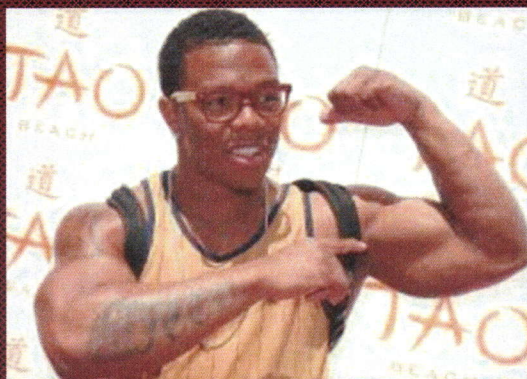
"As a child, I heard in my home doctors and ambulance men say, 'Mrs. Stewart, you must've done something to provoke him.' 'Mrs. Stewart, it takes two to make an argument.' Wrong. Wrong! My mother did nothing to provoke that -- and even if she had, violence is NEVER EVER a choice that a man should make. Ever."

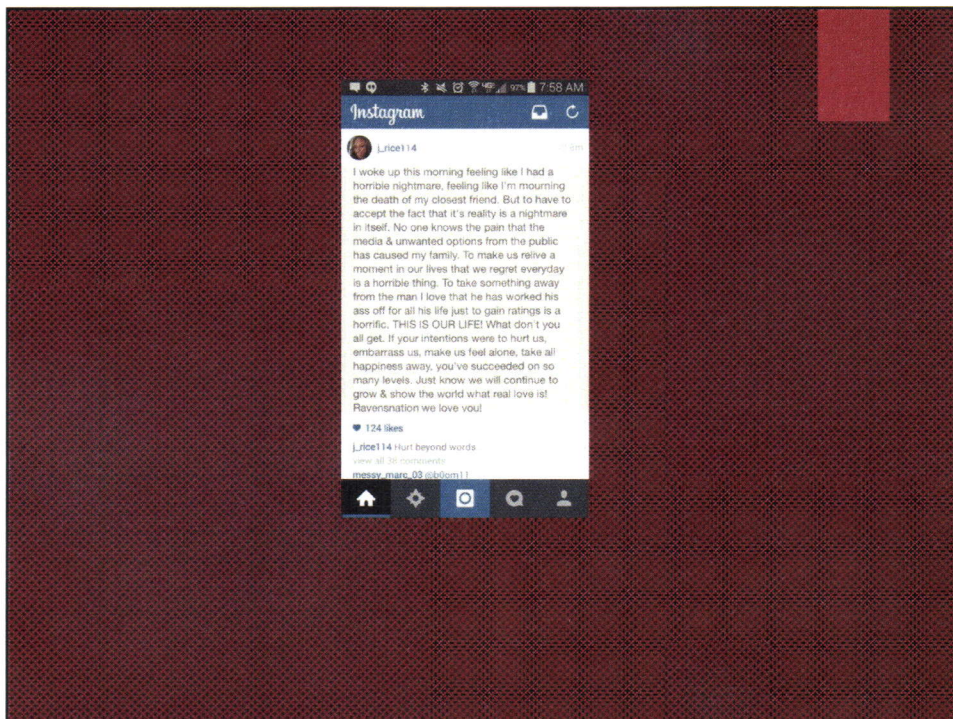
-- Patrick Stewart



Rice DV Case









Victim Behavior

- ▶ The majority of Domestic Violence victims have PTSD (Numbers vary, but some studies say 90 per cent)
- ▶ According to National Institute on Drug Abuse, women in drug treatment:
 - ▶ 90 per cent have been DV victims (Miller 2004)
 - ▶ 74 per cent have been sexual assault victims (Kubbs 2000)



PTSD Behaviors

- ▶ Feeling emotionally numb
- ▶ Difficulty sleeping
- ▶ Upsetting dreams/thoughts
- ▶ Intrusive flashbacks
- ▶ Sense of hopelessness
- ▶ Difficulty concentrating
- ▶ Irritability/Anger
- ▶ Guilt/Shame
- ▶ Self destructive behaviors
- ▶ Difficulty making decisions



▶ ***DV Victims have more TBIs than NFL Players***

- ▶ Symptoms of TBI range in severity, depending where they occur in the brain and how much damage has occurred over time. They include headaches, double vision, imbalance and decreased motor ability, as well as problems with memory, planning and learning, aggression, irritability and depression.
- ▶ Sojourner Center (Phoenix, AZ) June 2015

- ▶ "Having a brain injury makes it a lot harder for her get a job and support herself and her kids," Kim Gandy said. Some symptoms of TBI, such as problems with memory and irritability, may disadvantage a woman if she takes legal actions to protect herself.
- ▶ "She may have more difficulty making her case to the judge, to a police officer, getting a restraining order," Gandy said, explaining that women with TBI may appear uncooperative or unreliable in court.

- ▶ For Kerri Walker, a TBI diagnosis meant she finally had an explanation for all her cognitive issues. "The one thing that abusers tell us over and over is that we are stupid," she said. "The relief factor for so many women is going to be unmeasurable."
- ▶ It's taken her a long time -- and a lot of work -- to adjust to a life with brain injury.
- ▶ Four months after Walker left her abusive partner, she said, a brain aneurysm ruptured, requiring surgery. Since then, she's spent years learning how to live with -- and accept -- the effects of cumulative brain injuries.
- ▶ "It's changed me for the rest of my life," Walker said. "My short-term memory is shot. I'll be writing and I'll mix up letters. All of a sudden, I'll write an E backwards. I had to find a new normal for myself."

Victims' Coping Mechanisms



Victims often think
they can control it.
But they can't.



Bulletproofing DV Cases



Prove the case without the
participation of the victim.

We can do this. Example:
murder cases.

In most cases, the investigation
is done when the patrol
vehicle leaves the scene.



Bulletproofing DV Cases

- ▶ FIRST thing to say to victim at the scene:
 - ▶ NOTHING.
 - ▶ Yes, NOTHING.
- ▶ Second thing to say to victim:
 - ▶ Are you OK/hurt?
- ▶ Third thing to say to victim:
 - ▶ What happened?



Bulletproofing DV Cases

Evidence available to prosecutor – Admissible regardless of victim participation:

9-1-1 recording	2 %	Victim Photo	17 %
Crime Scene Photo	16 %	Physical Evidence	8 %
Weapons seized	11 %	Medical evaluation	9 %
Witness interviews	37 %	Suspects statements	18 %

Can be increased: Recorded hearsay statements!



Bulletproofing DV Cases

"It is what it is."

"It is what we make it."

** An opportunity for us to create admissible evidence **

International Chiefs of Police
DV Model Policy (June 2006):

"Use recording devices to capture statements made by combatants and witnesses."

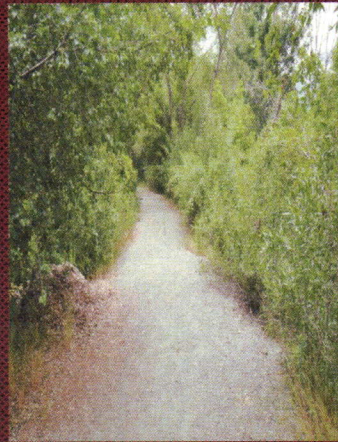


Pictures can tell a story



- ▶ Follow Up photos can do more than document injuries –
- ▶ They record emotions and pain
- ▶ According to FBI research, photographs increase success of DV cases by about 60 per cent (both filing and conviction)

Photographs of the Scene



Evidence collection – At the Scene

- ▶ Don't forget old school methods of gathering evidence
- ▶ Voice messages
- ▶ Text messages



Evidence Collection – At the Scene



- ▶ Consider photographing the kids
- ▶ AND
- ▶ Talk to them!

Evidence Collection – At the Scene



- ▶ One picture is worth a thousand words
- ▶ But seize the item, too, if possible

Evidence Collection – Follow Up



Gather previous police reports
Gather medical reports
Statements of neighbors, friends, family
Get a more detailed victim statement
Follow-up photographs
** JAIL PHONE CALLS **

Favorite Jail Call Quotes

- ▶ "I'm sorry baby! You know I only hit you when I'm drunk."
- ▶ "You didn't tell the cops where I took the guns, right?"
- ▶ "They can't prove I broke the window unless you tell them."
- ▶ "Don't come to court. They will have to dismiss it."
- ▶ "Tell them it wasn't me."
- ▶ "Then who should I say did it?" "Make something up."

- ▶ Def: "Hey Baby – how are you?"
- ▶ Victim: "My head really hurts."
- ▶ Def: "Yeah, I know, my fist hurts from punching you in the head."

Taking the Reluctant Victim Case to Trial

- ▶ State vs. Robert Jones
- ▶ 7 Previous DV calls in 3 years (one PIA)
- ▶ Defendant came home high on meth and beat girlfriend in the head with his laptop computer and threatened to kill her
- ▶ Two small boys present during assault

Taking the Reluctant Victim Case to Trial

State vs. Robert Jones - Audio of 9-1-1 call



What charges could be filed based on 9-1-1 call and officer responding to the scene?

Charges Filed

- ▶ Charges filed:
- ▶ Aggravated Assault (F3) – weapon used
- ▶ Two Counts DV in Presence of Child (MBs)
- ▶ No Contact Order requested but not issued

Taking the Reluctant Victim Case to Trial

- ▶ Audio of Victim Testimony Part 1



Taking the Reluctant Victim Case to Trial

► Audio of Victim Testimony Part 2



I freed a thousand
slaves.

I could have freed a
thousand more if only
they knew they were
slaves.

-- Harriet Tubman



